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RICHARD W. WIEKING
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U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 BMMSOFT, INC.,

12 Plaintiff,

Case No. C09-04562 MEJ

13 vs.
14 WHITE OAKS TECHNOLOGY, INC. and
15 DOES 1-10,

16 Defendant.

17 COMPLAINT FOR

18
19 (1) COPYRIGHT INFRINGEMENT
20 (2) BREACH OF LICENSE
21 (3) MISAPPROPRIATION OF
22 TRADE SECRETS

23 Jury Trial Demanded

24 Plaintiff BMMSoft, Inc. ("BMMSoft") alleges as follows against defendant White Oak
25 Technology, Inc. ("WOTI"):

26 I. INTRODUCTION

27 1. This is an action to address and restrain the unlawful conduct of WOTI, which has
28 and is engaged in unlawful copying and misappropriation of software and proprietary information
29 owned by plaintiff BMMSoft.

II. JURISDICTION AND VENUE

2. The court has original jurisdiction over the federal copyright infringement claims set

forth in this complaint under 28 U.S.C. §§ 1331 and 1338. This court also has supplemental jurisdiction over the breach of license and misappropriation of trade secret claims under 28 U.S.C. § 1337. This court has personal jurisdiction over the defendant WOTI because (a) the contracts made in connection with the subject matter of this action were made in California, and (b) the acts of infringement and misappropriation have substantial impact in this district.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c).

III. THE PARTIES

4. BMMsoft is a corporation organized under the laws of the state of California, having its principal place of business in San Francisco, California.

5. Defendant WOTI is a business organization of unknown form and status. On information belief, its principal offices are located in Silver Spring, MD.

6. The identities of defendants Does 1-10 are not presently known and this Complaint will be amended to include the names of those individuals and/or entities when such information becomes available.

IV. INTRADISTRICT ASSIGNMENT

7. This action is intellectual property action excepted from the Court's assignment plan pursuant to Civil Local Rule 3-2(c).

V. FACTUAL ALLEGATIONS

8. BMMsoft is a software development company that has its principal offices in San Francisco, California. Its principal product is called the EDMT Server (“the Software”), which stores structured data (like traditional database information) and unstructured data (like emails and documents) in a single database.

9. The Software consists of code that sits atop commercially available database products, like MySQL and Sybase IQ, which form the “back-end” for the Software. The Software manages the ingestion of data by parsing the data and managing the data within the backend database for fast ingestion, searching and cross-analysis.

10. The Software is the subject of a copyright registration with the United States

1 Copyright Office, the certificate of which is attached hereto as Exhibit A.

2 11. Aspects of the Software contain confidential and proprietary information (the
 3 “Confidential Information”), including the manner in which data is parsed and ingested. This
 4 Confidential Information has enabled one of the most unique characteristics of the Software –
 5 which is that it is able to ingest, process and search massive amounts of data with very fast
 6 performance. Indeed, the Software has been certified as powering the largest data warehouse on
 7 record by the Guinness Book of World Records.

8 12. BMMsoft markets the Software through distributors, including Sybase, Inc.
 9 (NASDAQ: SYBS) which develops one of the backends used by the Software. Sybase resold the
 10 Software pursuant to a reseller license agreement between it and BMMsoft, dated June 27,
 11 2005(the “Reseller Agreement”).

12 13. In February 2008, Sybase resold the Software to WOTI , together with the Sybase
 13 IQ product. As part of this transaction, on information and belief, WOTI entered into the End
 14 User License Agreement in the form attached hereto as Exhibit B, which formed part of the
 15 Reseller Agreement and which was distributed by Sybase as part of its resale to WOTI (the
 16 “EULA”).

17 14. In 2008, BMMsoft (through Sybase) sold a total of eight (8) production CPU core
 18 licenses and eight (8) development CPU core licenses of the Software to WOTI. All of these
 19 licenses were intended for a WOTI end-customer who was to use the Software for its internal
 20 purposes (the “End-User Project”). Commencing in March 2008, WOTI engineers regularly
 21 called and e-mailed BMMsoft in San Francisco to obtain support with the installation of the
 22 Software.

23 15. BMMsoft delivered an update to the Software called version 6.2 in July 2008, which
 24 had very high ingest speeds compared to the previous version.

25 16. WOTI continued to seek telephone e-mail support from BMMsoft for version 6.2.
 26 During these support communications, BMMsoft disclosed Confidential Information to WOTI
 27 concerning system performance and optimization.

1 17. After months of extensive work with BMMsoft, on November 23, 2008, WOTI
2 declared that the “32-core EDMT system has gone production”. However, WOTI only had 8
3 production core licenses – not 32. Thus, WOTI required an additional license for 24 cores. But
4 when BMMsoft sought the additional licenses, WOTI stopped communicating with BMMsoft.

5 18. In January 2009, WOTI told BMMsoft over the phone that the End User Project had
6 been cancelled. However, BMMsoft is informed and believes that, in 2008, WOTI ordered 48
7 core licenses of Sybase IQ from Sybase which were intended for the End-User Project.

8 19. BMMsoft is informed and believes, and based thereon alleges, that WOTI
9 unlawfully copied the Software, and sold such illegal copies to the End-User Project.

10 20. WOTI had no authorization to use, copy, sell or otherwise deploy.

11 21. Section 9 of the EULA specifically provides that the EULA, as a contract between
12 BMsoft and WOTI, is governed by California law.

13 22. Sybase also has its principal offices in California, and on information and belief,
14 WOTI's purchase agreement with Sybase is also governed by California law.

15 23. As a result of entering contracts with BMM and Sybase, each of which are
16 headquartered in California, and each of which have contractual provisions selecting California
17 law as governing law, WOTI's unlawful conduct described in this complaint had a foreseeable and
18 natural effect in California. Moreover, by knowingly contacting BMMsoft in California for
19 support, WOTI's acts of infringement and misappropriation have a foreseeable and substantial
20 effect in California and in this district.

FIRST CAUSE OF ACTION
(Infringement under 17 U.S.C. et seq. of the Copyright Act)

23 24. BMMsoft re-alleges and incorporates by reference the allegations in paragraphs 1 -
24 23.

25. BMMsoft holds valid and exclusive registered rights to the Software.

26. WOTI has reproduced, sold, licensed, rented, offer for sale, or otherwise distributed
27. to the public products containing some or all of the copyrighted material in the Software, or

1 derivative works based upon the Software, without authorization from BMMsoft, thus infringing
 2 BMMsoft's exclusive copyright rights in the Software in violation of 17 U.S.C. § 106.

3 27. WOTI is not licensed or authorized by BMMsoft to use the Software beyond the
 4 licenses sold in 2008.

5 28. On information and belief, WOTI's infringement of BMMsoft rights is willful, and
 6 unless restrained, WOTI will continue its course of conduct of wrongfully infringing BMMsoft's
 7 copyright in the Software.

8 29. The natural and foreseeable result of WOTI's conduct has been and will be to
 9 deprive BMMsoft of the benefits of its exclusive right to reproduce the copyrighted Software in
 10 copies, to prepare derivative works based upon the Software, to sell, license or otherwise distribute
 11 copies of the Software to the public, to deprive BMMsoft of goodwill, and to injure BMMsoft
 12 relationships with present and prospective customers.

13 30. WOTI has obtained or will obtain sales and revenue from its infringement of
 14 BMMsoft's Software.

15 31. BMMsoft has lost and will continue to lose sales and revenue from WOTI's unlawful
 16 use of the Software.

17 32. BMMsoft will continue to suffer irreparable damage and sustained lost profits until
 18 WOTI's actions alleged herein are enjoined by this court.

19 33. As a result of the copyright infringement described above, BMMsoft is entitled to
 20 relief including, but not limited to, injunctive relief, actual or statutory damages, statutory costs
 21 and attorney's fees, and prejudgment interest.

22 **SECOND CAUSE OF ACTION**
 23 **(Breach of License)**

24 34. BMMsoft re-alleges and incorporates by reference the allegations in paragraphs 1 -
 25 33.

26 35. Under Section 5 of the EULA, WOTI was and is prohibited, except as specifically
 27 permitted, from copying or reverse-engineering the Software.

36. WOTI materially breached these prohibitions when it copied the Software, beyond the licenses purchased from BMMsoft.

37. BMMsoft has performed all its obligations under the EULA.

38. As a direct and proximate result of WOTI's conduct, BMMsoft has been damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Misappropriation of Trade Secrets: Civil Code §3426.1)

39. BMMsoft re-alleges and incorporates by reference the allegations in paragraphs 1 - 38.

40. The Software contains confidential information belonging to BMMsoft.

41. The Software is specifically identified as “Confidential Information” in section 9 of the EULA.

42. The Confidential Information constitutes trade secrets because the Software derives independent economic value from not being generally known to the public. Moreover, BMMsoft has undertaken reasonable efforts to preserve the secrecy of such information, including, but not limited to, requiring end users to enter into any EULA which expressly acknowledges the confidential nature of the software.

43. Under Civil Code section 3426.1, WOTI and Does 1-10 each have an obligation not to appropriate, pertain, and use for their own purposes, or disclose to third persons any trade secret information belonging to BMMsoft, including but not limited to, the trade secrets, proprietary information contained in the Software.

44. By selling the Software without a license, and disclosing it to third parties without authorization, WOTI has engaged in misappropriation of trade secrets in violation of Civil Code section 3426.1.

45. As a direct and proximate result of the aforementioned misappropriation of trade secrets by WOTI and Does 1-10, BMMsoft has suffered, or will in the future suffer, actual economic losses, the amount of which BMMsoft cannot presently determine.

1 46. The misappropriation of trade secrets by WOTI and Does 1 - 10 as described above
2 has caused, and will in the future cause, substantial, irreparable injury to BMMsoft, unless and
3 until the Court enjoined and restrains such unlawful behavior. BMMsoft has no adequate remedy
4 at law for such substantial and irreparable injury. Therefore, the Court should enter a temporary
5 restraining order, preliminary injunction and, or permanent injunction preventing all defendants
6 from engaging in any future misappropriation of BMMsoft's trade secrets, including the Software.

7 47. Because WOTI and Does 1-10 have engaged in willful and malicious
8 misappropriation of BMMsoft's trade secrets, the court should award exemplary damages against
9 each of them, are soon to Civil Code section 3426.3(c).

10 48. Because WOTI and Does 1 - 10 have engaged in willful and malicious
11 misappropriation of BMMsoft trade secrets, the Court should award BMMsoft its reasonable
12 attorneys fees and costs incurred in connection with this section, as provided by Civil Code section
13 3426.4.

VI. PRAYER FOR RELIEF

15 Based on the foregoing allegations, BMMsoft request relief as follows:

A. FOR THE FIRST CAUSE OF ACTION

1. for an order permanently enjoining defendants from infringing BMMsoft copyrighted works;
2. for an award of defendant's profits, or damages in such amount as may be found, or for statutory damages;
3. for an award of costs pursuant to 17 U.S.C. § 505
4. for an award of reasonable attorneys fees pursuant to 17 U.S.C. § 505;
5. for an award of prejudgment interest on the amount of any award;
6. for such other relief further relief as the court may deem just and equitable.

B. FOR THE SECOND CASE OF ACTION

1. for recovery of all damages and losses proximately caused by defendants' wrongful

1 conduct.

2 **C. FOR THE THIRD CAUSE OF ACTION**

3 1. for recovery of all damages and losses proximately caused by defendants' wrongful
4 conduct;

5 2. for exemplary damages under Civil Code section 3426.3

6 3. for punitive damages pursuant to Civil Code section 3294;

7 4. for all reasonable attorneys fees incurred by BMMsoft in connection with this cause;

8 5. for all costs including for expert witnesses incurred by BMMsoft in connection with
9 his cause;

10 6. for a preliminary injunction preventing WOTI and all of the defendants from any
11 use, disclosure, or retention of BMMsoft trade secrets, confidential and/or
12 proprietary information,

13 7. for a permanent injunction preventing WOTI and all of the defendants from using, or
14 retaining any trade secrets, confidential and/or proprietary information belonging
15 to BMMsoft;

16 8. for restitution of all money or other things of value wrongfully obtained by any
17 defendants;

18 9. for such further relief as the court deems just and proper.

20 Respectfully Submitted,

21 NARANCIC & KATZMAN, PC

22 /s/ Perry J. Narancic 

23 Perry J. Narancic

24 Dated: September 28, 2009

25 Attorneys for Defendant/Appellant
26 ONLINENIC, INC.

DEMAND FOR JURY TRIAL

Plaintiff BMMsoft hereby demands a jury trial on all issues properly tried to a jury.

Respectfully Submitted,
NARANCIC & KATZMAN, PC

Dated: September 28, 2009

/s/ Perry J. Narancic

Perry J. Narancic

Attnorneys for Defendant/Appellant
ONLINENIC, INC.

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:
TX 6-965-494

Effective date of
registration:
September 1, 2009

Title

Title of Work: **EDMT 6.2**

Completion/Publication

Year of Completion: **2008**

Date of 1st Publication: **July 30, 2008**

Nation of 1st Publication: **United States**

Author

Author: **BMMsoft, Inc.**

Author Created: **computer program**

Work made for hire: **Yes**

Citizen of: **United States**

Domiciled in: **United States**

Copyright claimant

Copyright Claimant: **BMMsoft, Inc.**

225 Bush Street, 16th Fl., San Francisco, CA, 94104, United States

Rights and Permissions

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Telephone: **650-814-7688**

Address: **325 Sharon Park Drive**

#736

Menlo Park, CA 94025 United States

Certification

Name: **Perry J. Narancic**

Date: **September 1, 2009**

Applicant's Tracking Number: **BMM**

EXHIBIT B

EXHIBIT B
END USER LICENSE AGREEMENT

BMMsoft LICENSE AGREEMENT

UNITED STATES AND CANADA
REVISED: 30 MAY 2005

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click the "I agree" button if you wish to install the program.

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8. U.S. GOVERNMENT RESTRICTED RIGHTS. The Program is Commercial Computer Software. If this license is acquired under a U.S. Government contract, use, duplication and disclosure of the Program and Documentation by the U.S. Government is subject to restrictions set forth in this Agreement, which incorporates all applicable FAR provisions, for example FAR Section 52.227-19. BMMsoft reserves all unpublished rights under United States copyright laws.

9. CONFIDENTIALITY. "Confidential Information" shall include the Program (including methods or concepts utilized therein) and all information identified by BMMsoft as proprietary or confidential. Confidential Information shall remain the sole property of BMMsoft and shall not be disclosed to any third party without the express written consent of BMMsoft; except that You may disclose Confidential Information to consultants performing services for Your benefit, provided that such consultants are bound by a written non-disclosure agreement with You protecting such Confidential Information in a manner consistent with this Agreement. Except with respect to the Program, items will not be deemed Confidential Information if (i) available to the public other than by a breach of an agreement with BMMsoft; (ii) rightfully received from a third party not in breach of any obligation of confidentiality; (iii) independently developed by You without access to the Confidential Information; or (iv) if proven to have been known to You at the time of disclosure. You shall immediately inform BMMsoft if You are required to produce Confidential Information by operation of

law, and if so requested by BMMsoft, shall provide reasonable assistance to BMMsoft in seeking to limit such production. A copyright notice on a Program does not, by itself, constitute evidence of publication or public disclosure. You shall not release the results of any benchmark of the Program to any third party without the prior written approval of BMMsoft for each such release.

10. FEES. License and Support fees for the Program are due and payable to BMMsoft Net 30 days after the invoice date if You have acquired the Program directly from BMMsoft; otherwise such fees are due and payable in accordance with the reseller's policies. You shall pay all applicable shipping and handling charges, and sales, use, value added, personal property, or similar taxes, tariffs or governmental charges, exclusive of those based upon BMMsoft's or its reseller's income and corporate franchise taxes.

11. TERM. This license is effective until terminated. You may terminate it at any time by destroying the Program and Documentation. This license will also terminate if You fail to comply with any term or condition of this Agreement. Upon such termination, You agree to destroy the Program and Documentation.

12. LIMITED WARRANTY. Unless otherwise specified in the Documentation, for a period of 90 days from the date of shipment of the Program to You, BMMsoft warrants that the Program, when properly Used, will operate in material conformity with its Documentation and the Program media shall be free of defects. In the event of a non-conforming Program or defective media, Your sole remedy shall be, at BMMsoft's option, replacement of the defective Program or a refund of the license fees paid for the affected Program. This limited warranty gives You specific legal rights. You may have other rights which vary from jurisdiction to jurisdiction. Some jurisdictions do not allow limitations on implied warranties so the above limitations may not apply to You. BMMsoft warranties extend solely to You, the original licensee.

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13. INFRINGEMENT INDEMNITY. BMMsoft, at its own expense, agrees to (i) defend, or at its option settle, any claim or suit against You on the basis of infringement of any copyright, trade secret or United States patent ("Intellectual Property Rights") by Your Use of the Program, and (ii) pay any final judgment entered against You on such issue or any settlement thereof, provided (a) You give BMMsoft sole control of the defense and/or settlement; (b) You notify BMMsoft promptly in writing of each such claim or suit and give BMMsoft all information known to You relating thereto, and (c) You cooperate with BMMsoft in the settlement and/or defense. (You will be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation requested by BMMsoft.) If all or any part of the Program is, or in the opinion of BMMsoft may become, the subject of any claim or suit for infringement of any Intellectual Property Rights, or in the event of any adjudication that the Program or any part thereof does infringe, or if Your Use of the Program or any part thereof is enjoined, BMMsoft, at its expense, may either: (1) procure for You the right to Use the Program or the affected part thereof; (2) replace the Program or affected part; (3) modify the Program or affected part to make it non-infringing; or (4) if none of the foregoing remedies are commercially and reasonably feasible, refund the license fees You paid for the Program or the affected part thereof. BMMsoft shall have no obligation to the extent a claim is based upon (A) Use of any version of the Program other than a current, unaltered version, if infringement would have been avoided by a current, unaltered version; (B) combination, operation or Use of the Program with software and/or hardware not delivered by BMMsoft if such infringement could have been avoided by not combining, operating or using of the Program with such software and/or hardware, or (C) any modifications to the Program which were not made by BMMsoft. The above states the entire liability of BMMsoft, and Your exclusive remedy, with respect to any infringement or alleged infringement by the Program or any part thereof.

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15. HIGH RISK ACTIVITIES. The Program and Third Party Products are not fault-tolerant and are not designed, manufactured or intended for use or resale in the on-line control of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Program could lead directly to death, personal injury, or severe physical or environmental damage, and BMMsoft and its suppliers specifically disclaim any express or implied warranty of fitness for such purposes.

16. FORCE MAJEURE. BMMsoft shall not be liable by reason of any failure or delay in the performance of its obligations hereunder on account of: acts by You, acts of God or the public enemy, war, terrorism, riots, strikes, embargo, acts of civil or military authority, unavailability of communications facilities or energy sources, or any other cause which is beyond the reasonable control of BMMsoft.

17. GENERAL. This Agreement constitutes the complete agreement between the parties with respect to the Program and services and supersedes all previous and contemporaneous communications, representations, or agreements regarding the subject matter hereof. This Agreement is governed by the laws of the State of California (other than conflict of law provisions) if You are located in the United States, and by the laws of the province of Ontario (other than conflict of law provisions) if You are located in Canada. It shall not be governed by the United Nations Convention on the International Sale of Goods, the application of which is expressly excluded. The terms of this Agreement supersede the terms of any purchase order or other document issued or signed by You to authorize Your license of the Program, except that a purchase order shall be binding as to the identification of Program and services ordered, the type of license purchased, the fees due and the site for installation or performance of services, as set forth therein. Other terms and preprinted terms on or attached to any purchase order shall be void. If any provision of this Agreement is held to be unenforceable, such provision shall be limited, modified or severed, as necessary, to eliminate its unenforceability, and all other provisions shall remain unaffected. The failure or delay of either party to exercise any of its rights shall not be deemed a waiver of such rights, and no waiver of any breach of this Agreement shall constitute a waiver of any other breach. If You have any questions concerning this Agreement, write to BMMsoft Corp., 225 Bush Street 16th Floor, San Francisco, CA 94104 USA.

18. TRANSLATION/ TRADUCTION. The parties have requested that this Agreement and all documents contemplated hereby be drawn up in English. Les parties ont demandé à ce que le présent Contrat et tous les documents qui y sont mentionnés soient rédigés en anglais.

19. ABBREVIATIONS AND DEFINITIONS.

"A" in the column entitled "Platform/OS" of an "Exhibit A" – denotes a Program edition licensed for installation on Machines operating on any available operating system or platform.

"Agreement" - This License Agreement, together with any applicable Supplements and Product Specific License Terms accompanying the Program, each Purchase Order and each "Exhibit A", if any.

"Application License" or "AP" – The limited right to install the Program on any server at the single physical location (or approved hosting site) specified for such license in the applicable Order. A Platform License ("PL") may also be required.

"Cluster License", or "CL" - The limited right to Use the Program on any number of Servers at the Site specified for such license in the applicable Order, but only if each such Server is part of a load-balanced or failover configuration and in the aggregate provide no greater access to the Program or any associated data than would be provided by a single Server operating alone.

"Cold Standby" - A Cold Standby Program shall be limited to the Machine running the operating system shown on the Order, at a site shown on the Order. A Cold Standby Program is a copy of a Program that is deployed on a separate Machine as a backup to process data that is periodically updated from data residing on Customer's primary production Machine. In the event of a failure of the production copy or production Machine, the Cold Standby Program may be Used to access and process such updated data. A Cold Standby Program may not be accessed or Used in production at the same time as the primary production copy. The Cold Standby Program must be licensed for the same number of Servers, Seats, Concurrent Users, Connections, or CPUs, as applicable, as the production copy. Programs for which a Cold Standby License is available will be specified in the then current Price List.

"Concurrent User License" or "CU". The limited right for a maximum number of users, as indicated in the applicable Order, to

directly or indirectly access a single server copy of a Program at any one time. Under the Concurrent User license model, each Concurrent User may only access a single, identifiable licensed server.

“Connection” or “CN” – The Program may only be connected to the number of applications and/or databases equal to the number of connections set forth in the applicable Order.

“CPU Fee” or “IC” - The license fee payable by Customer for each copy of the Program shall be determined by multiplying the number of processors (“CPUs”) by the applicable rate, each as specified on the Order. In the event that the number of processors on the Machine is increased, Customer shall report such increase, execute a new Order and pay an additional amount determined by multiplying the incremental processors by the then applicable rate per processor set forth in the Price List.

“CPU License”, or “CP” - The license fee payable by Customer for each copy of the Program shall be determined by multiplying the total number of processors on a Machine (“CPUs”) by the applicable rate each as specified on the Order. In the event that the number of processors on the Machine is increased, Customer shall report such increase, execute a new Order, and pay an additional amount determined by multiplying the incremental processors by the then applicable rate per processor set forth in the Price List. The number of users shall be limited only by the capacity of the licensed CPUs, and may include internal users within the Customer’s organization, and external users outside of the Customer’s organization accessing the Program via the Internet (“Internet Users”). Internet Users may not Use the Program to develop or modify applications or perform other programming tasks, and may only Use the Program in conjunction with Customer’s applications.

“Developer License” or “DV” - The limited right to Use the Program on a Standalone Seat for the sole purposes of evaluation and development and not in a production environment.

“Development and Testing License” or “DT” – The limited right to Use the Program for development and testing purposes only and not in a production environment. Customer may install as many copies of the Program as desired on a single Server. A DT license is not limited to a Standalone Seat.

“Documentation” - Installation instructions and user manuals supplied with the Program.

“E” in the column entitled “Platform/OS” of an “Exhibit A” - denotes a Program edition licensed for installation on Machines operating in a UNIX environment other than those specified as “W” (Workplace) or “S” (High End UNIX).

“Exhibit A” - a standard form purchase authorizing document made available by BMMsoft which may be substituted for a Purchase Order.

“Hot Standby” – A Hot Standby license permits a copy of a Program to be loaded onto one or more Machines in a cluster environment where monitoring for a failure of the production copy of the Program occurs automatically and continuously and failover to the Hot Standby Program is automatic. A Hot Standby Program may not be accessed or Used in production at the same time as the primary production copy. The Hot Standby Program must be licensed for the same number of Servers, Seats, Concurrent Users, Connections, or CPUs, as applicable, as the production copy. Programs for which a Hot Standby License is available will be specified in the then current Price List.

“Internet Access License” or “IAL” – a limited right to permit access to a licensed Program by a number of “External Internet Seats” which shall be limited only by the capacity of the Machine, provided Customer has paid the applicable CPU fees for each processor on such Machine. “External Internet Seats” shall mean Seats which access the specified Program via the Internet; provided that the person at such Seat is not acting in the capacity of an employee, agent or independent contractor of Customer. External Internet Seats may query the Program database and update such database to the extent allowed by Customer’s application, but may not use the Program to develop or modify applications or perform other programming tasks. Customer may not Use the specified Program in connection with a website hosted by Customer on behalf of third parties. An Internet Access License does not cover intranet usage or other internal usage and Customer must acquire the necessary Seat licenses for all internal usage of the Program. If Customer purchases (or renews) Support for a Program for which an Internet Access License has been obtained, Customer shall purchase the same level of Support for the Internet Access License as for such Program.

“Machine” – A single computer hardware system identified on the applicable Order running a single copy of the Operating System Software.

“Mainframe Base” or “MB” – The basic license fee applicable for certain mainframe Programs based upon the mainframe Machine model set forth in the applicable Order. For each copy of a Program designated as license type MB, Customer shall also pay the applicable MSU License fee based upon the then current MSU rating of the mainframe Machine. See also “MSU (Millions of Service Units) License”.

“Major Release” - A major Update release of the Programs containing new features and functions as well as error corrections.

“MSU (Millions of Service Units) License” or “MU” – The license fee payable by Customer for each copy of the Program shall be determined by multiplying the number of MSUs for the Machine by the applicable rate and adding the applicable Mainframe Base rate thereto, all as specified in the applicable Order. In the event that the number of MSUs for the Machine is increased, Customer shall report such increase, execute a new Order, and pay an additional amount determined by multiplying the incremental number of MSUs by the then applicable MSU rate for the Program and adding any incremental base rate fee thereto, all as set forth in the Price List. The number of users shall be limited only by the capacity of the licensed MSUs, and may include internal users within the Customer’s

organization, and external users outside of the Customers organization accessing the Program via the Internet ("Internet Users"). Internet Users may not Use the Program to develop or modify applications or perform other programming tasks, and may only Use the Program in conjunction with Customer's applications.

"Operating System Software" - The operating system software listed in the Order applicable to the relevant copy of the Program.

"Order" - a Purchase Order or BMMsoft "Exhibit A" signed by Customer and accepted by BMMsoft.

"OT" - denotes "other", for products or services included on an Order which are not otherwise defined.

"Networked License" - The limited right to access any licensed server in the network from any licensed Seat.

"Platform License" or "PL" - The limited right to install the Program on any server at the single physical location (or approved hosting site) specified for such license in the applicable Order.

"Price List" - BMMsoft's then current price list for the country in which the Program is to be installed.

"Primary Copy" - a licensed copy of the Program provided by BMMsoft, including a copy provided initially as a trial copy.

"Program" - the object code version of the software product(s) listed in the Order, as well as any and all Updates and authorized copies. Although the Program media may contain other software products, Customer is licensed to install and Use only the designated Program.

"Purchase Order" - a purchase order or other purchase authorizing document issued by Customer for BMMsoft products and/or services and accepted by BMMsoft, as confirmed by a BMMsoft invoice.

"Quantity of Licenses" - the number of copies, Servers, Seats, Concurrent Users, Connections or CPUs, as applicable, licensed for a particular Program pursuant to an Order.

"S" in the column entitled "Platform/OS" of an "Exhibit A" - denotes a Program edition licensed for installation on high end, high capacity Machines and/or Machines which are scalable over multiple processors, operating in a UNIX environment with more than 8 processors

"Seat", or "ST" - a specific identifiable unique accessor of information such as (but not limited to) a terminal, personal computer, single user workstation, personal digital assistant ("PDA"), wireless or real time device.

"Secondary Copy" - a licensed copy of the Program reproduced by Customer from the Primary Copy.

"Server" or "SR" - a computer containing software which permits it to await and fulfill services to other computers.

"Standalone Seat" or "SS" - The limited right to install the Program on a single workstation Machine (and not a server Machine) for access solely by the single workstation Machine upon which it resides.

"Standby Concurrent User", or "SC" - Permits installation of a back up copy of a Program licensed under a Concurrent User License.

"Standby Connection" or "NS" - Permits installation of a back up copy of a Program licensed under a Connection License.

"Standby CPU" or "SF" - Permits installation of a back up copy of a Program licensed under a CPU License, either "CP" or "IC". See "CPU License" and "Incremental CPU".

"Standby Seat" or "SE" - Permits installation of a back up copy of a Program licensed under a Networked License.

"Standby Server" or "SV" - Permits a copy of a Program to be installed as a back up in the event of an interruption in the operation of a production copy of the same Program. See further, "'Cold Standby", "Warm Standby" and "Hot Standby".

"Support" - The technical Support plan selected by Customer.

"Transactions" means the number of inbound messages plus the number of outbound messages processed.

"Updates" means error corrections, maintenance releases and Major Releases of the Program made available to BMMsoft customers under certain BMMsoft Support plans.

"Upgrade" means (i) transfer of the Program to a Machine of a higher BMMsoft Machine Class, i.e. transfer to a Machine that provides greater processing capacity, or (ii) Customer migration from one edition of a Program to another edition with increased functionality, e.g. from Advanced Edition to Enterprise Edition.

"U" is used, in the following table, to denote, without limitation, the Program edition information on the Program.

"W" in the column entitled "Platform/OS" of an "Exhibit A" - denotes **"Workplace"** and indicates a Program edition licensed for installation on low end Machines operating in a UNIX environment which have a maximum Machine processing capacity (determined by multiplying the maximum number of CPUs by the maximum MHz of each CPU capable of being installed on the server per the manufacturer, regardless of the actual number of CPUs installed or the actual MHz of the installed CPUs) which is equal to or less than 2000, and Machines operating in a Windows or Linux environment.

"Warm Standby" - A Warm Standby Program shall be limited to the Machine running the operating system shown on the Order, at a site shown on the Order. A Warm Standby Program is an operating copy of a Program deployed on a separate Machine as a backup to process data that is automatically and continuously being replicated from Customer's primary production Machine. A Warm Standby

production copy or production Machine, the Warm Standby Program may be Used to access such replicated data. The Warm Standby Program must be licensed for the same number of Servers, Seats, Concurrent Users, Connections or CPUs, as applicable, as the production copy. Programs for which a Warm Standby License is available will be specified in the then current Price List.